IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1019 OF 2002

Shri Sudhakar B. Berde ... Petitioner

V/s

1.Municipal Corporation of

Greater Mumbai & Anr. ... Respondents

Mr.Rahul Nerlekar for petitioner

Smt. R.R. Joshi for respondent No.1

Coram : (Dr.)D.Y.Chandrachud,J.

Dated : 18th March, 2005.

P.C. :-

. The petitioner was appointed as a gardener-cum-caretaker at a Municipal School from time to time in leave vacancies. In the course of his cross examination, he made the following admissions.

> "True that I was employed as daily rated during the period of leave vacancy. True that number of other persons are also working on daily rated basis"

The witness who deposed on behalf of the respondents produced the attendance record which showed that the petitioner had not worked for 240 days in a year. Now, it is a settled principle of law that a workman has to

establish by cogent evidence that he has served for a period of 240 days in a year.Moreover, a vacancy has to exist. No right of regularisation ensues merely upon the completion of 240 days as a general principle of law. (Madhyamik Siksha Parishad vs. Anil Kumar AIR 1994 S.C. 1638). The petitioner was admittedly engaged only in a leave vacancy. Therefore, the complaint under items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Practices Act,1971,was correctly rejected and the prayer for permanency cannot be granted.

This petition was adjourned on a previous occasion since the court was informed that respondent No.1 had a scheme for regularisation. The scheme which is since placed on the record requires completion of 240 days in the year immediately prior to 01/03/2002. The petitioner does not fulfill the requirement for regularisation under the scheme. The petition is accordingly dismissed.No order as to costs.

(Dr.) D.Y. Chandrachud, J.